

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Heinz-Josef LENZ, et al.
Title: Polymorphisms in the ERCC1
Gene for Predicting Treatment
Outcome
Appl. No.: 10/522,664
International
Filing Date: 7/31/2003
371(c) Date: 8/3/2005
Patent No.: 7,662,553
Grant Date: 2/16/2010
Examiner: Carla J. Myers
Art Unit: 1634
Confirmation
Number: 8635

<p>CERTIFICATE OF ELECTRONIC TRANSMISSION I hereby certify that this paper is being electronically transmitted to the United States Patent and Trademark Office, Alexandria, Virginia via EFS-Web on the date below.</p> <p>_____ Laura Davis (Printed Name)</p> <p>_____ (Signature)</p> <p>_____ April 15, 2010 (Date of Transmission)</p>

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on February 16, 2010 as U.S. Patent No. 7,662,553.

The Patent Office determined that the patent was entitled to 79 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-

year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On January 7, 2010, the U.S. Court of Appeals for the Federal Circuit affirmed the September 30, 2008 decision of the United States District Court for the District of Columbia finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Kappos*, No. 2009-1120 (Jan. 7, 2010). The Federal Circuit determined that "[b]efore the three-year mark, no 'overlap' can transpire between the A delay and the B delay," and that "[i]f an A delay occurs on one day and a B delay occurs on a different day, those two days do not 'overlap' under section 154 (b)(2)."

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 477 days PTA as shown below.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	681 days
(b) Total Applicant delay:	204 days
Final PTA Determination:	477 days

Applicants therefore respectfully request that the patent be accorded 477 days PTA.

The patent is not subject to a terminal disclaimer.


Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

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However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date: April 15, 2010

By 

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